

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RANDY COY HENDERSON,  
Petitioner,

v.

RICHARD MORGAN,  
Respondent.

Case No. C04-5344RJB

ORDER DENYING CERTIFICATE  
OF APPEALABILITY

This matter comes before the court on the petitioner's Motion for Certificate of Appealability. Dkt. 97. The court must consider whether to grant or deny the petitioner a Certificate of Appealability. *See* 28 U.S.C. 2253(c)(3). The court has reviewed the record herein.

PROCEDURAL HISTORY

On January 31, 2005, U.S. Magistrate Judge Karen L. Strombom issued a Report and Recommendation, concluding that this petition for writ of habeas corpus is untimely pursuant to 28 U.S.C. § 2244(d), that the petition should be dismissed with prejudice, and that petitioner's pending motions should be denied. Dkt. 92. On March 4, 2005, the court adopted the Report and Recommendation and dismissed the petition as untimely pursuant to 28 U.S.C. § 2244(d). Dkt. 94. Petitioner has now appealed to the U.S. Court of Appeals for the Ninth Circuit and has filed this motion requesting a Certificate of Appealability.

1                    STANDARD FOR GRANTING A CERTIFICATE OF APPEALABILITY

2            The district court should grant an application for a Certificate of Appealability only if the  
3 petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. §  
4 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner  
5 must make a showing that reasonable jurists could debate whether, or agree that, the petition should  
6 have been resolved in a different manner or that the issues presented were adequate to deserve  
7 encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (quoting  
8 *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). When the court denies a claim on procedural  
9 grounds, the petitioner must show that jurists of reason would find it debatable whether the petition  
10 states a valid claim of the denial of a constitutional right and that jurists of reason would find it  
11 debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 120  
12 S.Ct. at 1604.

13                    DISCUSSION

14            This court dismissed the petition as untimely pursuant to 28 U.S.C. § 2244(d). The case was  
15 therefore dismissed on procedural grounds. There is nothing in the record that would support a  
16 conclusion that jurists of reason would find it debatable whether the petition states a valid claim of  
17 the denial of a constitutional right and that jurists of reason would find it debatable whether this  
18 court was correct in its procedural ruling.

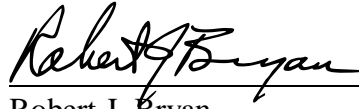
19            In his motion for a Certificate of Appealability, petitioner argues that this court has made  
20 errors in its interpretation of the Antiterrorism and Effective Death Penalty Act (AEDPA), and that  
21 this habeas corpus petition is not subject to the provisions of AEDPA. Dkt. 97. Petitioner’s  
22 arguments are without merit.

23            The Certificate of Appealability should be denied.  
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1 Accordingly, it is hereby **ORDERED** that petitioner's motion for a Certificate of  
2 Appealability (Dkt. 97) is **DENIED**.

3 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to  
4 any party appearing *pro se* at said party's last known address.

5 DATED this 2<sup>nd</sup> day of May, 2005.

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8 Robert J. Bryan  
9 U.S. District Judge  
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